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LYKES/CSAV Slot Charter Agreement

FMC Agreement No. 011776

A Slot Charter Agreement

Expiration Date: None

This Agreement has not been published previously.



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ARTICLE 1: FULL NAME OF THE AGREEMENT

The full name of this Agreement is the LYKES/CSAV Slot Charter Agreement ("Agreement").

ARTICLE 2: PURPOSE OF THE AGREEMENT

The purpose of this Agreement is to permit each of the Parties, through space chartering, to provide more frequent sailings and to achieve efficiencies and economies in their respective services offered in the Trade (as hereinafter defined) covered by the Agreement, all to the benefit of the parties and the shipping public.

ARTICLE 3: PARTIES TO THE AGREEMENT

The parties to the Agreement (hereinafter "party" or "parties") are:

1. Lykes Lines Limited LLC
401 E. Jackson Street
Suite 3300
Tampa, FL 33602

(Hereinafter referred to as "Lykes")
2. Compania Sud Americana De Vapores S.A.
Plaza Sotomayor 50
P.O. Box 49
Valparaiso, Chile

(Hereinafter, referred to as "CSAV")

ARTICLE 4: GEOGRAPHIC SCOPE OF THE AGREEMENT

This Agreement applies to the trades between ports on the Gulf Coast of the United States and inland and coastal points in the United States served via such ports and ports in Puerto Rico, on the one hand, and ports in the Dominican Republic, Mexico, Costa Rica, Panama, the Caribbean Coast of Colombia and Venezuela and inland and coastal points in the aforementioned countries served via such ports, on the other hand (hereinafter referred to as the "Trade").

ARTICLE 5: AGREEMENT AUTHORITY

1. Slot Sale

a. The parties may consult and agree upon the sale by LYKES to CSAV of slots on vessels operated in the Trade by LYKES or on vessels operated in the Trade by non-parties on which LYKES has chartered slots. Initially, Lykes will provide three vessels of approximately 1100 TEU capacity, and will provide a scheduled round trip voyage duration of 21 days and frequency of seven days, except in circumstances beyond the control of the operator. The parties may consult and agree on the terms and conditions of and relating to such sale, including without limitation terms and conditions relating to the compensation to be paid for such slots, sailing schedules, service frequency, ports to be served and port rotations. More specifically, but without limiting the authority granted herein, the parties agree that:

(i) Initially, CSAV will be allocated a basic slot allocation of 100 TEUs at an average of 12 tons per TEU per voyage and CDWT of up to 1200 tons per voyage leg, along with a directly proportionate number of reefer plugs, on each of the three vessels operated by LYKES pursuant to FMC Agreement No. 232-011648. Slot costs shall be reviewed every six (6)

months, with the first review taking place twelve (12) months after this Agreement becomes effective.

(ii) Initially, the scheduled port rotation shall be Houston, Altamira, Veracruz, Puerto Limon, Manzanillo -- Panama, Cartagena, Puerto Cabello, La Guaira, Rio Haina, Houston. Service particulars are based on presently known trading conditions. LYKES agrees to consult with CSAV concerning any permanent change(s) to be made in port calls at least 45 days prior to the effective date of such change and will take into considerations any due concerns of CSAV before taking any such decision. If CSAV objects to any permanent change in port calls and such change materially affects its business, CSAV may either (1) withdrawal from the agreement, effective on the earlier of 45 days after it received notice of the change from Lykes or the effective date of the change, whichever is sooner; or (2) reduce its basic slot allocation, effective when the change in port calls takes effect.

(iii) Additional slots may be purchased by CSAV with prior agreement from Lykes (subject to space availability). Requests for additional slots per sailing either one way, round trip or coastal are required 1 working day prior to port cut off. Such agreed space will be considered as guaranteed space and it will be invoiced on a used or unused basis. In the event CSAV does not fulfil its allocation and another line utilizes the given space (laden cargo only), Lykes will credit CSAV for the encroached space at the agreed slot rate. Acceptance of IMO out of gauge cargo an/or special equipment shall be at the discretion of Lykes and shall be requested by CSAV in writing. CSAV shall have the option to load inter-port cargo, provided such cargo moves within the applicable voyage leg allocation and conforms with any applicable cabotage laws.

b. Each party may separately advertise sailings of the vessels subject to this Agreement, but shall maintain separate marketing organizations.

c. Should CSAV wish to assign slots to an affiliated Company it may do so on an ad hoc basis, provided that all necessary Shipping Act requirements have been met. However, any permanent arrangement by CSAV to slot charter space on this service to an affiliated Company i.e. for a period of more than 4 consecutive sailings must be approved by Lykes and other VSA members, such approval not to be unreasonably withheld.

2. Efficient Use of Equipment, Terminals, Stevedores, Ports and Suppliers

The parties may interchange empty containers, chassis and/or related equipment to provide for the efficient use of such equipment on such terms as they may agree. The parties may also jointly contract with or coordinate in contracting with stevedores, terminal, ports, and suppliers of equipment, land or services or may designate a party to provide such services on the designating party's behalf. In this regard, it is agreed that CSAV shall make its containers available on, or take delivery of its containers from the terminal allocated for the relevant vessels on which it receives space at each port prior to the announced export closing time. Late export containers will be accepted subject to operational feasibility. Contractual arrangements will be made directly between CSAV and the relevant local stevedore. This Agreement does not authorize joint operation of a marine terminal by the parties in the United States.

3. Miscellaneous

The parties may also discuss and agree upon such general administrative matters and other terms and conditions concerning the implementation of this Agreement as may be necessary or convenient from time to time, including, but not limited to, performance procedures and penalties, procedures for allocating space, forecasting, terminal operations, stowage planning, schedule adjustments, record-keeping, responsibility for loss or damage, insurance, liabilities, claims, indemnification, consequences for delays, and treatment of hazardous and dangerous cargoes.

4. Further Agreements

Pursuant to 46 C.F.R. § 535.407, any further agreement contemplated herein cannot go into effect unless filed and effective under the Shipping Act of 1984, except to the extent that such agreement concerns routine operational or administrative matters.

5. Partnership

Notwithstanding any provision in the agreement to the contrary, the rights and obligations under this Agreement are personal to the parties and are non-assignable and nothing herein shall constitute a partnership, association or joint venture.

6. Competing Services

a) In the event that CSAV mounts a competing service within the geographical scope of this agreement, Lykes may terminate this Agreement by providing CSAV with ninety (90) days notice from the time it is discovered that CSAV will mount such service.

b) In the event that CSAV wants to take up slots on a new competing service within the geographical scope of this Agreement, CSAV agrees to advise Lykes of its intent before doing so. If, after good faith discussions, the needs which lead CSAV to take up slots on another service cannot be met through adjustments to the service hereunder, CSAV may exercise its option to take up slots on the competing service.

c) Services in the trade operated by CSAV or on which CSAV takes space at the time this Agreement is signed shall not be affected by the provisions of this Article 5.6.

ARTICLE 6: OFFICIALS OF THE AGREEMENT AND
DELEGATIONS OF AUTHORITY

The following are authorized to subscribe to and file this Agreement and any accompanying materials and any subsequent modifications to this Agreement with the Federal Maritime Commission:

- (i) Any authorized officer of each of the parties; and
- (ii) Legal counsel for each of the parties.

ARTICLE 7: MEMBERSHIP AND WITHDRAWAL

1. Membership

Membership is limited to the parties hereto except that additional carriers offering regular service in the Trade may be admitted by unanimous agreement of the parties and by amendment of the Agreement pursuant to the Shipping Act of 1984.

2. Withdrawal

Except as provided in Articles 5.1(a)(ii) and 5.6(a), any party may withdraw from this Agreement for any reason upon 90 days prior written notice to the other party, provided that notice of withdrawal shall not be given before the end of the first nine months of the agreement. Notwithstanding the preceding sentence: (i) if there is a change in the ownership or control of a party to this Agreement, then the other party may withdraw from the Agreement upon 30 days prior written notice to such party; and (ii) if operations under FMC Agreement No. 232-011648 terminate, then either party may withdraw immediately. In the event that either Party withdraws hereunder, it shall remain liable to the other for all liabilities accrued during the term of the Agreement.

ARTICLE 8: VOTING

All actions taken pursuant to this Agreement shall require unanimous agreement of the parties.

ARTICLE 9: DURATION AND TERMINATION OF AGREEMENT

1. Term

This Agreement shall take effect as of the effective date determined in accordance with section 9.3 below and shall remain in effect until terminated by mutual agreement or upon withdrawal of all parties less one under Article 7 above. The Parties hereby expressly waive any claim they may have for compensation for loss of business or the like due to termination of the Agreement hereunder or arising from a withdrawal under Article 7.

2. Bankruptcy, etc.

If at any time during the term of this Agreement a Party becomes bankrupt, insolvent, or have a receiving order made against it, suspending payments, or continuing its business under a receiver for the benefit of any of its creditors, it is agreed the affected party may be excluded from the Agreement with 30 days written notice.

3. Effective Date

The effective date shall be the date the Agreement becomes effective pursuant to the Shipping Act of 1984.

4. Notice to Government Agencies

The Federal Maritime Commission shall be promptly notified in writing of any termination date of this Agreement.

ARTICLE 10: NON-ASSIGNMENT

The rights and obligations of each party under the Agreement herein shall not be

assignable except to subsidiaries, parent companies or fellow subsidiaries or with the prior unanimous agreement. Each party shall warrant that any subsidiary or fellow subsidiary to which any assignment is made shall not be sold to another party.

ARTICLE 11: ARBITRATION

a. Except as otherwise provided herein, any dispute or claim arising hereunder which is not amicably settled by the parties shall be settled by arbitration. Arbitration shall be held in New York, New York, under the rules then in effect of the Society of Maritime Arbitration, Inc. (the "Society's Rules") by an arbitrator familiar with ocean container shipping who shall have no financial or personal interest whatsoever in or with any party and shall not have acquired a detailed prior knowledge of the matter in dispute. Upon unanimous agreement among the parties involved in the dispute, arbitration may be held in any other place.

b. Any party hereto may call for such arbitration by service upon the other of a written notice specifying a brief description of the disputes, the monetary amount involved, if any, the differences which such party desires to put to arbitration and the remedy sought. Within fifteen (15) days after service of such notice, the parties in dispute shall jointly agree upon an arbitrator of the aforesaid qualifications, failing which within five days thereafter, they shall request the President of the Society of Maritime Arbitrators, Inc. to appoint an arbitrator. The arbitration shall thereafter be conducted under the Society's Rules except as expressly provided herein.

c. For any disputes involving \$100,000 or less, excluding interest, in costs of arbitration and legal fees and expense, the parties shall arbitrate on documents only, as contemplated under section 26 of Society's Rules.

- d. The arbitrator's decision, including his written findings of fact and conclusions, shall be rendered within the period provided in the Society's Rules. Judgment may be entered on an award of the arbitrator and shall be enforceable in a court of competent jurisdiction. The arbitrator may allocate the costs of arbitration to one or more participating parties in a manner consistent with the award or decision. The arbitrator may not award exemplary or punitive damages and may not order specific performance.
- e. A copy of the decision shall be served by the arbitrator on the Parties.

ARTICLE 12: APPLICABLE LAW AND SEVERABILITY

- a. The interpretation, construction and enforcement of this Agreement shall be governed by
(i) the laws of the State of New York without reference to the laws respecting conflicts of laws, and (ii) to the extent applicable, the laws of the United States.
- b. Notwithstanding the foregoing, if any term or provision to this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any applicable enactment or rule or law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.

ARTICLE 13: FORCE MAJEURE

Neither of the parties shall be responsible for its failure to perform any terms or conditions of this agreement if such failure is due to civil commotion, invasion, rebellion, hostilities, strikes, labor disputes, sabotage, other work stoppage, governmental (national, states, prefectural municipal or other) regulations or controls, Acts of God, inability to obtain materials

or services, or any other cause beyond the control of such party.

ARTICLE 14: COUNTERPARTS

This Agreement and any future amendment hereto may be executed in counterparts. Each such counterpart shall be deemed an original, and all together shall constitute one and the same agreement. This Agreement may be executed and delivered by exchange of facsimile copies showing the signatures of each Party, and the original signatures need not be affixed to the same copy.